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PATENT  
Serial No. 09/632,671

AF/2154  
ITW

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
ON APPEAL FROM THE EXAMINER TO THE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Billy G. Moon  
Serial No.: 09/632,671  
Filing Date: August 7, 2000  
Group Art Unit: 2154  
Examiner: Kenny S. Lin  
Title: COMMUNICATING DATA USING FACSIMILE  
PROTOCOLS

**MAIL STOP APPEAL BRIEF - PATENTS**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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Dear Sir:

**APPEAL BRIEF**

Appellant appeals to the Board of Patent Appeals and Interferences from the decision of the Examiner, contained in a Final Office Action mailed March 29, 2004 ("*Final Office Action*"), finally rejecting Claims 1-31. Appellant mailed a Notice of Appeal on June 29, 2004. Appellant respectfully submits this Appeal Brief, in triplicate, under the provisions of 37 C.F.R. § 1.192.

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### **REAL PARTY IN INTEREST**

The real party in interest for this Application under appeal is Cisco Technology, Inc. of San Jose, California, as indicated by the assignment recorded August 7, 2000 in the Assignment Records of the United States Patent and Trademark Office at Reel 011062, Frame 0626.

### **RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to the Appellant, the undersigned Attorney for Appellant, or the Assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **STATUS OF CLAIMS**

Claims 1-31 were rejected in the *Final Office Action*. Claims 1-31 are all presented for appeal and are set forth in Appendix A.

### **STATUS OF AMENDMENTS**

The claims on appeal and which appear in Appendix A of this Appeal Brief represent the form of the claims as of the time the *Final Office Action* was issued on March 29, 2004. Appellant filed no amendments to the claims after the *Final Office Action*.

### **SUMMARY OF INVENTION**

Vehicle services systems typically include modems and cellular phones. *Specification*, at p. 2, ll. 2-5. When activated, a standard vehicle services system establishes a data link with a call center and then communicates data to the call center using a modem. *Id.*, at ll. 5-6. All necessary data must be transmitted before switching to a voice session since the modem connection may be difficult or impossible to re-establish once dropped. *Id.*, at ll. 9-11. Thus, significant delays may exist between activating the system and connecting to a live operator. *Id.*, at ll. 11-12. Furthermore, vehicle services systems generally operate using analog cellular systems since current digital cellular systems do not support switching between data and voice modes. *Id.*, at ll. 12-15.

The present invention provides techniques for communicating data using facsimile protocols. *Id.*, at p. 3, ll. 2-3. An apparatus may negotiate a facsimile communications session with a server and communicate data to the server by encapsulating the data as a

payload for a facsimile page transmission. *Id.*, at p. 6, ll. 4-6. For example, the apparatus may communicate point-to-point protocol (PPP) data as the payload of a facsimile page transmission. *Id.*, at ll. 6-8. The apparatus and the server may communicate PPP data, such as Internet protocol (IP) packets, using facsimile page transmissions and acknowledgements. *Id.*, at p. 8, ll. 11-19.

When communicating over a digital cellular network (DCN), facsimile protocols facilitate in-session switching between voice and data communications. *Id.*, at p. 7, ll. 24-26. For example, offhook indications may be utilized to switch from communicating data to communicating voice. *Id.*, at p. 8, ll. 21-23. To switch from communicating voice to communicating data, the apparatus may renegotiate a facsimile communications session with the server. *Id.*, at p. 10, ll. 24-26.

### ISSUES

I. Whether Claims 1, 2, 8, 9, 18, 19, 25, and 26 are patentable under 35 U.S.C. § 102(e) over U.S. Patent No. 6,057,943, which issued to Kweon et al. (“*Kweon*”).

II. Whether Claims 5, 6, 12, 15, 22, and 29 are patentable under 35 U.S.C. § 103(a) over *Kweon*.

III. Whether Claims 3, 4, 7, 10, 11, 13, 14, 17, 20, 21, 23, 24, 27, 28, 30, and 31 are patentable under 35 U.S.C. § 103(a) over *Kweon* in view of U.S. Patent No. 5,854,830, which issued to Kenmochi (“*Kenmochi*”).

IV. Whether Claim 16 is patentable under 35 U.S.C. § 103(a) over *Kweon* in view of U.S. Patent No. 6,330,499, which issued to Chou et al. (“*Chou*”).

### GROUPING OF CLAIMS

For each of issues I, III, and IV, Appellant requests that all claims be grouped together for purposes of this appeal. For issue II, Appellant submits that Claims 5, 6, 12, 15, 22, and 29 do not stand or fall together. Appellant requests that Claims 5, 6, 12, 15, 22, and 29 be grouped as follows for purposes of this appeal:

Group IIA: Claim 5.

Group IIB: Claim 15.

Group IIC: Claims 6, 12, 22, and 29.

## ARGUMENT

**I. Claims 1, 2, 8, 9, 18, 19, 25, and 26 are patentable over *Kweon* because *Kweon* fails to describe, either expressly or inherently, every element of these claims.**

The Examiner rejects Claims 1, 2, 8, 9, 18, 19, 25, and 26 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,057,943, which issued to Kweon, et al. ("*Kweon*"). To support a rejection under 35 U.S.C. § 102(e), the Examiner must show that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (quoting *Verdegaal Bros. v. Union Oil of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)).

Appellant's independent Claim 1 recites:

A communications apparatus comprising:  
a client interface operable to receive point-to-point protocol (PPP) data;  
a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission; and  
a network interface operable to establish a link with a remote location, to negotiate a facsimile communications session with the remote location, and to communicate the facsimile page transmission to the remote location.

Appellant submits that *Kweon* fails to describe, either expressly or inherently, each and every element of this claim.

Among other aspects of Claim 1, *Kweon* fails to describe "a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission." *Kweon* simply discloses traditional techniques of using point-to-point protocol (PPP) to support data communications over a serial interface. Consider that *Kweon* discloses a system including a data terminal, a mobile terminal, a base station, and a facsimile terminal. See *Kweon*, at Figure 5. The data terminal is a notebook computer; the mobile terminal is a cellular phone; and the notebook computer and the mobile terminal are connected using a serial interface. *Id.*, at Figure 4 and col. 4, ll. 59-62. The data terminal utilizes "upper layer protocols" and the mobile terminal utilizes "lower layer protocols." *Kweon*, at col. 3, ll. 65-67. *Kweon* defines "upper layer protocols" as including PPP and "lower layer protocols" as including radio link protocol (RLP). *Id.* With this background, consider the following summary of the disclosure of *Kweon*:

The data terminal transmits the fax image data encapsulated by the upper layer protocols to the mobile terminal and the mobile terminal transmits it encapsulated and segmented by the lower layer protocols to the base station. The base station recognizes the encapsulated and segmented image data, processe[s] it to remove the protocols and converts the raw data to transmit to the counterpart fax terminal in an identical CDMA network or a different network such as PSTN.

*Id.*, at Abstract. In other words, *Kweon* discloses that the data terminal encapsulates fax image data using PPP before transmitting the encapsulated fax image data to the mobile terminal using a serial interface and PPP. The mobile terminal, in turn, encapsulates the PPP data using RLP and communicates the encapsulated PPP data to the base station using RLP. The base station removes the protocols and faxes the original fax image data to the facsimile terminal, for example through a wireless network or the public switched telephone network (PSTN). Thus, while *Kweon* discloses encapsulating fax image data using PPP, this fails to show “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.”

In the *Final Office Action*, the Examiner cites various portions of *Kweon* as disclosing “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.” See *Final Office Action*, at pp. 3 and 12. However, none of the cited portions describe this claim element. First, the Examiner cites:

The data terminal has upper layer protocols of the said PPP and above and the mobile terminal has the lower layer protocol of the said RLP and below. The protocols in the data terminal can be achieved easily by using conventional computer networking environment accessing the internet and only the application software operating on the said protocols is needed.

*Kweon*, at col. 3, ll. 65-67; col. 4, ll. 1-4. However, this language merely points out that the data terminal, or laptop computer, includes a protocol stack, with PPP being the lowest protocol, while the mobile terminal, or cellular phone, includes wireless protocols below PPP. As shown more clearly in Figure 5, the laptop computer organizes various protocols into a standard, top-down order. The cellular phone, unsurprisingly, includes RLP as well as a particular wireless protocol, code division multiple access (CDMA). Simply stated, a laptop computer supporting a standard protocol stack and a cellular phone supporting wireless protocols fails to show “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.”

Next, the Examiner cites:

When the mobile terminal receives the service option response order informing the acquisition of a modem in IWF from the base station, it activates the RLP and sends the connection confirm signal to the application interface in the data terminal. From receiving the connection confirm signal, the PPP, the LCP, the IPCP and the TCP/IP in the data terminal are initialized and negotiated with counterpart protocols in the base station. Then the application interface in the data terminal sends the stored modem commands including modem dial command (ATD) with dial number encapsulated in the protocols to the acquired modem in IWF.

*Kweon*, at col. 4, ll. 20-30. This discussion, among other things, explains how information is communicated between the data terminal and the base station through the mobile terminal. It makes clear that the data terminal encapsulates modem commands in PPP and other protocols to communicate these commands to the base station through the mobile terminal. Thus, again, this language fails to show “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.”

The Examiner goes on to cite:

A schematic diagram for a CDMA fax service system is shown in FIG. 4. A notebook computer 600 is a data terminal and a cellular phone 620 is a mobile terminal. The notebook computer 600 and the cellular phone 620 is connected with a serial communication interface 610. A notebook computer 600 has the application software for fax service and the cellular phone provides the radio link for fax transmission.

*Kweon*, at col. 4, ll. 58-64. This language points out that in Figure 4 a notebook computer and a cellular phone are connected with a serial communication interface, while the cellular phone and a base station utilize a radio link. Note that PPP is a protocol for transmitting IP packets over the serial communication interface, and RLP is a protocol for transmitting information over the radio link. Thus, while the notebook computer has software for sending facsimiles, the protocols used to transport the fax data are PPP and RLP. Therefore this language fails to show “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.”

The Examiner then cites:

The data terminal has the upper layer protocols including the application software, the application interface, the TCP, the IP, the IPCP, the LCP and the PPP. The mobile terminal has the lower layer protocol including the RLP and the CDMA traffic

channel. The protocols in the data terminal can be achieved easily by using conventional computer networking environment accessing the internet and only the application software operating the protocols is needed. The Protocol stack in BS 630 may be distributed several place or integrated one or two place.

*Kweon*, at col. 5, ll. 18-27. As discussed above, this language fails to show “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.”

The Examiner also cites *Kweon*’s Abstract, which, as discussed above, discloses using PPP to encapsulate protocols above PPP in a protocol stack, including a facsimile protocol. Again, this fails to show “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.”

Next, the Examiner cites:

When the application interface receives a modem dial command (ATD) with dial number from application software, it sends a fax call origination 710 signal to the mobile terminal MT2 620.

*Kweon*, Col. 5, lines 46-49. This section discloses that the laptop computer communicates a fax call origination signal to the cellular phone. This section does not specifically describe how the signal is communicated. However, the link between the laptop computer and the cellular phone is a serial link and PPP is a serial protocol, so the laptop computer must encapsulate the fax call origination signal in PPP. Regardless, this section still fails to show “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.”

Finally, the Examiner cites:

When once the traffic channel is opened between the mobile station and the base station, the fax software on the TE2 600 transmits the documents of a page unit following the T.30 procedure with controlling the acquired modem in IWF.

*Kweon*, Col. 6, lines 11-15. This portion discusses transmitting the documents on a traffic channel opened between the mobile station and the base station. This portion also does not specifically describe how the documents are communicated. However, again, the link between the laptop computer and the cellular phone is a serial link and PPP is a serial protocol, so the laptop computer must encapsulate the documents in PPP. Regardless, this portion also fails to show “a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission.”

For at least these reasons, Appellant submits that independent Claim 1 is allowable over *Kweon*. For analogous reasons, Appellant submits that independent Claims 8, 18, and 25 are allowable over *Kweon*. Claims 2, 9, 19, and 26 depend from Claims 1, 8, 18, and 25 respectively. Thus, at least for all of the reasons discussed above, Appellant requests the Board to reverse the rejection of Claims 1, 2, 8, 9, 18, 19, 25, and 26.

**II. Claims 5, 6, 12, 15, 22, and 29 are patentable over *Kweon* because *Kweon* fails to teach or suggest all elements of these claims.**

The Examiner rejects Claims 5, 6, 12, 15, 22, and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Kweon*. For issue II, Appellant submits that Claims 5, 6, 12, 15, 22, and 29 do not stand or fall together. Appellant requests that Claims 5, 6, 12, 15, 22, and 29 be divided into three groups, a Group IIA, which includes Claim 5, a Group IIB which includes Claim 15, and a Group IIC, which includes Claims 6, 12, 22, and 29. Appellant divides Issue II into three groups because, as shown below, each group is separately patentable.

**Group IIA**

The Examiner rejects Claim 5 under 35 U.S.C. § 103(a) as being unpatentable over *Kweon*. To reject a claim as being obvious, the prior art must teach or suggest all elements of the claim. *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974).

Claim 5 depends from independent Claim 1, which was shown above to be allowable over *Kweon*. Thus, because it depends from an allowable independent claim, Appellant requests the Board to reverse the rejection of Claim 5.

Furthermore, Appellant submits that Claim 5 includes additional elements not disclosed by *Kweon*. For example, Claim 5 includes:

the client interface is further operable to receive additional point-to-point protocol (PPP) data;

the protocol module is further operable to encapsulate the additional PPP data as a payload of a second facsimile page transmission; and

the network interface is further operable to negotiate a second facsimile communications session with the remote location and to communicate the second facsimile page transmission to the remote location.



The Examiner admits that *Kweon* “did not specifically teach” these elements. *Final Office Action*, at p. 5. However, the Examiner states that “it would have been obvious to implement *Kweon*’s method to handle additional PPP data encapsulation and provide multiple facsimile page transmissions using multiple facsimile communication sessions in order to provide the service to multiple users at the same time.” *Id.* Appellant disagrees. *Kweon* fails to disclose encapsulation of PPP data as a payload of a facsimile page transmission, and therefore it would not have been obvious to have multiple facsimile page transmissions encapsulating PPP data.

The Examiner apparently considers the elements added by Claim 5 to be “admitted prior art.” In the Advisory Action mailed July 8, 2004 (“*Advisory Action*”), the Examiner states:

Applicants [sic] should have raised these issues prior to the Office action [sic] made FINAL. Furthermore, . . . because Applicants [sic] have failed to challenge this Examiner’s “Official Notices/Obvious statements” stated in the previous office actions in a proper, reasonably [sic] and timely manner, they have been considered as admitted prior art.

*Advisory Action*, at p. 3.

Contrary to the Examiner’s assertions, Appellant repeatedly challenged the Examiner’s unsupported, conclusory statements about what one of ordinary skill in the art would find obvious at the time of the invention in the only response Appellant filed before the Examiner issued the *Final Office Action*. For example, with regard to Claim 5, Appellant argued:

Furthermore, Applicant points out that the Examiner failed to cite any reference with respect to various elements of Claims 5, 6, 12, 22, and 29. While in limited circumstances an examiner may take official notice of facts not in the record or rely on “common knowledge” in making a rejection, “such rejections should be judiciously applied.” M.P.E.P. §2144.03. It is not appropriate for an examiner to take official notice of facts without citing a prior art reference “where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” *Id.* (citing *In re Ahlert*, 165 U.S.P.Q. 418, 420-21 (C.C.P.A. 1970)). To the extent that the Examiner maintains these rejections based on “Official Notice,” “well known prior art,” “common knowledge,” or other information within the Examiner’s personal knowledge, Applicant respectfully requests the Examiner to cite a reference or references in support of these positions or provide an

affidavit in accordance with M.P.E.P. §2144.03 and 37 C.F.R. §1.104(d)(2).

Response Pursuant to 37 C.F.R. § 1.111, filed January 26, 2004, at p. 14. Moreover, the Examiner has never explicitly taken "Official Notice" in this case. Only in the *Advisory Action* does the Examiner now characterize the previous rejections as the Examiner taking "Official Notice." Thus, Appellant has not previously and does not now admit that the elements of Claim 5 are prior art.

In the *Final Office Action*, the Examiner cited, but did not rely on, new art in an attempt to provide support for the Examiner's conclusory statements about what one of ordinary skill in the art would find obvious at the time of the invention. See *Final Office Action*, at p. 12-13. The Examiner cited U.S. Patent No. 5,673,190, which issued to Kashleck et al. ("*Kashleck*"), as teaching that "additional optional modules can be added to expand the system." *Final Office Action*, at p. 12-13. Presumably the Examiner is attempting to find support for the rejection of Claim 5. However, the portion of *Kashleck* cited by the Examiner discusses using one or more primary modules as monitoring devices used to manage office machines. *Kashleck*, at col. 4, ll. 45-51. *Kashleck* fails even to pertain to encapsulating PPP data as payloads of facsimile page transmissions. Therefore, the Examiner has still failed to show the elements added by Claim 5.

Since the Examiner has admitted that elements of Claim 5 are not shown by *Kweon* and has provided no other reference to show these elements, Appellant submits that Claim 5 should be allowed over *Kweon*.

For at least all of these reasons, Appellant submits that dependent Claim 5 is allowable over *Kweon*. Therefore, Appellant requests the Board to reverse the rejection of dependent Claim 5.

### **Group IIB**

The Examiner also rejects Claim 15 under 35 U.S.C. § 103(a) as being unpatentable over *Kweon*. Again, to reject a claim as being obvious, the prior art must teach or suggest all elements of the claim. *In re Royka*, 490 F.2d at 981.

Appellant's independent Claim 15 recites:

A communications system comprising:  
a mobile unit operable to establish a link with a server  
using a wireless digital network, to negotiate a facsimile  
communications session with the server, to encapsulate client

point-to-point protocol (PPP) data as a payload of a facsimile page transmission, and to communicate the facsimile page transmission to the server; and

a server operable to receive the facsimile page transmission, to extract the client PPP data, to encapsulate server PPP data as a payload of a page transmission acknowledgement, and to communicate the acknowledgement to the mobile station.

Appellant submits that *Kweon* fails to fails to teach or suggest all elements of this claim.

Among other aspects of Claim 15, *Kweon* fails to teach or suggest “a mobile unit operable . . . to encapsulate client point-to-point protocol (PPP) data as a payload of a facsimile page transmission.” For analogous reasons as those discussed above with regard to Claim 1, *Kweon* simply fails to disclose this element.

*Kweon* also fails to teach or suggest “a server operable . . . to extract the client PPP data.” The Examiner admits that *Kweon* does not disclose this element. *Final Office Action*, at p. 5. However, the Examiner states that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made in *Kweon*’s method to have the server to extract the received client PPP data that was encapsulated.” *Id.* Appellant disagrees. *Kweon* fails to disclose encapsulation of PPP data as a payload of a facsimile page transmission, and therefore it would not have been obvious to have a server operable to extract this nonexistent encapsulated PPP data.

The Examiner also apparently considers “a server operable . . . to extract the client PPP data” to be “admitted prior art.” Again, in the *Advisory Action*, the Examiner states:

Applicants [sic] should have raised these issues prior to the Office action [sic] made FINAL. Furthermore, . . . because Applicants [sic] have failed to challenge this Examiner’s “Official Notices/Obvious statements” stated in the previous office actions in a proper, reasonably [sic] and timely manner, they have been considered as admitted prior art.

*Advisory Action*, at p. 3.

Again, contrary to the Examiner’s assertions, Appellant repeatedly challenged the Examiner’s unsupported, conclusory statements about what one of ordinary skill in the art would find obvious at the time of the invention in the only response Appellant filed before the Examiner issued the *Final Office Action*. For example, with regard to this element, Appellant argued:

Furthermore, Applicant points out that the Examiner fails to cite any reference with respect to “a server operable . . . to extract the client PPP data.” Instead, the Examiner states that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made in Kweon’s method to have the server to extract the received client PPP data that was encapsulated.” *Office Action*, page 5. Applicant respectfully disagrees. *Kweon* fails to show any encapsulation of PPP data. It is thus not obvious to perform an operation that is not even possible given the data disclosed by *Kweon*. Therefore, for at least these reasons, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of Claim 15.

Response Pursuant to 37 C.F.R. § 1.111, filed January 26, 2004, at p. 14. Moreover, the Examiner has never explicitly taken “Official Notice” in this case. Only in the *Advisory Action* does the Examiner now characterize the previous rejections as the Examiner taking “Official Notice.” Thus, Appellant has not previously and does not now admit that “a server operable . . . to extract the client PPP data” is prior art.

Since the Examiner has admitted that elements of Claim 15 are not shown by *Kweon* and has provided no other reference to show these elements, Appellant submits that Claim 15 should be allowed over *Kweon*.

For at least these reasons, Appellant submits that independent Claim 15 is allowable over *Kweon*. Therefore, Appellant requests the Board to reverse the rejection of independent Claim 15.

### **Group IIC**

The Examiner also rejects Claims 6, 12, 22, and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Kweon*. Again, to reject a claim as being obvious, the prior art must teach or suggest all elements of the claim. *In re Royka*, 490 F.2d at 981.

Each of these claims depends from an independent claim shown above to be allowable over *Kweon*. Thus, because they depend from allowable independent claims, Appellant requests the Board to reverse the rejection of Claims 6, 12, 22, and 29.

Furthermore, Appellant submits that Claims 6, 12, 22, and 29 include additional elements not disclosed by *Kweon*. For example, Claim 6 includes:

the network interface is further operable to receive a page transmission acknowledgement, wherein the acknowledgement includes point-to-point protocol (PPP) data; and

the protocol module is further operable to extract the PPP data from the acknowledgement.

Appellant submits that *Kweon* fails to teach or suggest these elements of Claim 6.

The Examiner admits that *Kweon* “did not specifically teach that the acknowledgement includes PPP data and the protocol module is further operable to extract the PPP data from the acknowledgement.” *Final Office Action*, at p. 6. However, the Examiner states that “sending an acknowledgement including data that can be extracted is well known in the art similar to sending an email message with attached files.” *Id.* Appellant disagrees. An email message with attached files in no way teaches or suggests the recited claim elements. Therefore, it would not have been obvious to have a network interface and a protocol module operable to perform the recited claim elements.

The Examiner apparently also considers these claim elements to be “admitted prior art.” Again, contrary to the Examiner’s assertions, Appellant repeatedly challenged the Examiner’s unsupported, conclusory statements about what one of ordinary skill in the art would find obvious at the time of the invention in the only response Appellant filed before the Examiner issued the *Final Office Action*. For example, with regard to these elements, Appellant argued:

Furthermore, Applicant points out that the Examiner failed to cite any reference with respect to various elements of Claims 5, 6, 12, 22, and 29. While in limited circumstances an examiner may take official notice of facts not in the record or rely on “common knowledge” in making a rejection, “such rejections should be judiciously applied.” M.P.E.P. §2144.03. It is not appropriate for an examiner to take official notice of facts without citing a prior art reference “where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” *Id.* (citing *In re Ahlert*, 165 U.S.P.Q. 418, 420-21 (C.C.P.A. 1970)). To the extent that the Examiner maintains these rejections based on “Official Notice,” “well known prior art,” “common knowledge,” or other information within the Examiner’s personal knowledge, Applicant respectfully requests the Examiner to cite a reference or references in support of these positions or provide an affidavit in accordance with M.P.E.P. §2144.03 and 37 C.F.R. §1.104(d)(2).

Response Pursuant to 37 C.F.R. § 1.111, filed January 26, 2004, at p. 14. Moreover, the Examiner has never explicitly taken “Official Notice” in this case. Only in the *Advisory Action* does the Examiner now characterize the previous rejections as the Examiner taking

“Official Notice.” Thus, Appellant has not previously and does not now admit that the elements of Claim 6 are prior art.

In the *Final Office Action*, the Examiner cited, but did not rely on, new art in an attempt to provide support for the Examiner’s conclusory statements about what one of ordinary skill in the art would find obvious at the time of the invention. *See Final Office Action*, at p. 13. For example, the Examiner cited U.S. Patent No. 5,301,186, which issued to Galuszka et al. (“*Galuszka*”), as teaching “extracting a portion of information from acknowledgements.” *Final Office Action*, at p. 13. Presumably the Examiner is attempting to find support for the rejection of the following claim element found, for example, in Claim 6: “the protocol module is further operable to extract the PPP data from the acknowledgement.” However, the portion of *Galuszka* cited by the Examiner discusses “return[ing] acknowledgement messages pursuant to, e.g., the data link protocol of the transmission line.” *Galuszka*, at col. 5, ll. 60-61. Thus, *Galuszka* fails even to pertain to the extraction of PPP data from a facsimile page acknowledgement. In fact, *Galuszka* nowhere discusses facsimile communications. Therefore, the Examiner has still failed to show the elements of Claim 6.

Since the Examiner has admitted that elements of Claim 6 are not shown by *Kweon* and has provided no other reference to show these elements, Appellant submits that Claim 6 should be allowed over *Kweon*.

For at least all of these reasons, Appellant submits that dependent Claims 6 is allowable over *Kweon*. For analogous reasons, Appellant submits that dependent Claims 12, 22, and 29 are allowable over *Kweon*. Therefore, Appellant requests the Board to reverse the rejection of dependent Claims 6, 12, 22, and 29.

**III. Claims 3, 4, 7, 10, 11, 13, 14, 17, 20, 21, 23, 24, 27, 28, 30, and 31 are patentable over *Kweon* in view of *Kenmochi* because these references fail to teach or suggest all elements of these claims.**

The Examiner rejects Claims 3, 4, 7, 10, 11, 13, 14, 17, 20, 21, 23, 24, 27, 28, 30, and 31 under 35 U.S.C. §103(a) as being unpatentable over *Kweon*, in view of U.S. Patent No. 5,854,830, which issued to Kenmochi (“*Kenmochi*”). Each of these claims depends from an independent Claim shown above to be allowable over *Kweon*. The introduction of *Kenmochi* fails to provide the elements of Appellant’s independent claims not shown by *Kweon*.

Therefore, for at least these reasons, Appellant requests the Board to reverse the rejection of Claims 3, 4, 7, 10, 11, 13, 14, 17, 20, 21, 23, 24, 27, 28, 30, and 31.

**IV. Claim 16 is patentable over *Kweon* in view of *Chou* because these references fail to teach or suggest all elements of this claim.**

The Examiner rejects Claim 16 under 35 U.S.C. §103(a) as being unpatentable over *Kweon*, in view of U.S. Patent No. 6,330,499, which issued to Chou et al. ("*Chou*"). Claim 16 depends from independent Claim 15, which was shown above to be allowable over *Kweon*. The introduction of *Chou* fails to provide the elements of Appellant's Claim 15 not shown by *Kweon*. Therefore, for at least this reason, Appellant requests the Board to reverse the rejection of Claim 16.

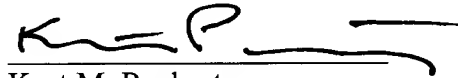
**CONCLUSION**

Appellant has demonstrated that the present invention, as claimed in Claims 1-31, is patentably distinct from the cited art. Accordingly, Appellant respectfully requests that the Board reverse the final rejection of the Examiner and instruct the Examiner to issue a Notice of Allowance of Claims 1-31.

Appellant submits this Appeal Brief in triplicate and encloses a check in the amount of \$330.00 to cover the required fee. The Commissioner is hereby authorized to charge any extra fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: Aug 27, 2004

Customer Number **05073**





**APPENDIX A - CLAIMS PRESENTED ON APPEAL**

1. A communications apparatus comprising:  
a client interface operable to receive point-to-point protocol (PPP) data;  
a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission; and  
a network interface operable to establish a link with a remote location, to negotiate a facsimile communications session with the remote location, and to communicate the facsimile page transmission to the remote location.
2. The apparatus of Claim 1, wherein the network interface is further operable to establish the link with the remote location using a wireless digital network.
3. The apparatus of Claim 1, wherein the network interface is further operable to:  
signal a local offhook indication to the remote location;  
receive a remote offhook indication from the remote location; and  
communicate voice information with the remote location using the link.
4. The apparatus of Claim 3, further comprising:  
an audio input device operable to receive outbound voice information from a user;  
an audio output device operable to generate audio output based upon inbound voice information from the remote location; and  
a switch operable to:  
disable the input device and the output device while the interface negotiates the facsimile communications session and communicates the facsimile page transmission;  
and  
enable the input device and the output device while the interface communicates voice information with the remote location.

5. The apparatus of Claim 1, wherein:  
the client interface is further operable to receive additional point-to-point protocol (PPP) data;

the protocol module is further operable to encapsulate the additional PPP data as a payload of a second facsimile page transmission; and

the network interface is further operable to negotiate a second facsimile communications session with the remote location and to communicate the second facsimile page transmission to the remote location.

6. The apparatus of Claim 1, wherein:  
the network interface is further operable to receive a page transmission acknowledgement, wherein the acknowledgement includes point-to-point protocol (PPP) data; and

the protocol module is further operable to extract the PPP data from the acknowledgement.

7. The apparatus of Claim 1, wherein the PPP data comprise automobile status information.

8. A method for wireless communications comprising:  
establishing a link with a remote location;  
negotiating a facsimile communications session with the remote location;  
encapsulating point-to-point protocol (PPP) data as a payload of a facsimile page transmission; and  
communicating the facsimile page transmission to the remote location.

9. The method of Claim 8, wherein establishing the link with the remote location comprises establishing the link with the remote location using a wireless digital network.

10. The method of Claim 8, further comprising:  
signaling a local offhook indication to the remote location;  
receiving a remote offhook indication from the remote location; and  
communicating voice information with the remote location using the link.

11. The method of Claim 10, further comprising:  
negotiating a second facsimile communications session with the remote location;  
encapsulating additional PPP data as a payload of a second facsimile page transmission; and  
communicating the second facsimile page transmission to the remote location.

12. The method of Claim 8, further comprising:  
receiving a page transmission acknowledgement, wherein the acknowledgement includes PPP data; and  
extracting the PPP data from the acknowledgement.

13. The method of Claim 8, wherein the PPP data comprise automobile status information.

14. The method of Claim 8, wherein negotiating the facsimile communications session comprises signaling a request for binary file transfer mode.

15. A communications system comprising:

a mobile unit operable to establish a link with a server using a wireless digital network, to negotiate a facsimile communications session with the server, to encapsulate client point-to-point protocol (PPP) data as a payload of a facsimile page transmission, and to communicate the facsimile page transmission to the server; and

a server operable to receive the facsimile page transmission, to extract the client PPP data, to encapsulate server PPP data as a payload of a page transmission acknowledgement, and to communicate the acknowledgement to the mobile station.

16. The system of Claim 15, further comprising:

an automobile diagnostic module operable to generate automobile status information;

a client coupled to the automobile diagnostic module and to the mobile unit, the client operable to receive the status information from the automobile diagnostic module, to encode the status information as the client PPP data, and to communicate the client PPP data to the mobile unit.

17. The system of Claim 15, wherein the mobile unit and the server are each operable to signal an offhook indication and communicate voice information using the link.

18. Communications software embodied in a computer readable medium and operable to:

establish a link with a remote location;  
negotiate a facsimile communications session with the remote location;  
encapsulate point-to-point protocol (PPP) data as a payload of a facsimile page transmission; and  
communicate the facsimile page transmission to the remote location.

19. The software of Claim 18, further operable to establish the link via a wireless digital network.

20. The software of Claim 18, further operable to:  
signal a local offhook indication to the remote location;  
receive a remote offhook indication from the remote location; and  
communicate voice information with the remote location using the link.

21. The software of Claim 20, further operable to:  
negotiate a second facsimile communications session with the remote location;  
encapsulate additional PPP data as a payload of a second facsimile page transmission;  
and  
communicate the second facsimile page transmission to the remote location.

22. The software of Claim 18, further operable to:  
receive a page transmission acknowledgement, wherein the acknowledgement includes PPP data; and  
extract the PPP data from the acknowledgement.

23. The software of Claim 18, wherein the PPP data comprise automobile status information.

24. The software of Claim 18, further operable to signal a request for binary file transfer mode for the facsimile communications session.

25. A communications apparatus comprising:  
means for establishing a link with a remote location;  
means for negotiating a facsimile communications session with the remote location;  
means for encapsulating point-to-point protocol (PPP) data as a payload of a facsimile page transmission; and  
means for communicating the facsimile page transmission to the remote location.

26. The communications apparatus of Claim 25, wherein the means for establishing the link with the remote location further comprises means for establishing the link with the remote location using a wireless digital network.

27. The communications apparatus of Claim 25, further comprising:  
means for signaling a local offhook indication to the remote location;  
means for receiving a remote offhook indication from the remote location; and  
means for communicating voice information with the remote location using the link.

28. The communications apparatus of Claim 27, further comprising:  
means for negotiating a second facsimile communications session with the remote location;  
means for encapsulating additional PPP data as a payload of a second facsimile page transmission; and  
means for communicating the second facsimile page transmission to the remote location.

29. The communications apparatus of Claim 25, further comprising:  
means for receiving a page transmission acknowledgement, wherein the acknowledgement includes PPP data; and  
means for extracting the PPP data from the acknowledgement.

30. The communications apparatus of Claim 25, wherein the PPP data comprise automobile status information.

31. The communications apparatus of Claim 25, wherein the means for negotiating the facsimile communications session further comprises means for signaling a request for binary file transfer mode.